

b. Several parties suggested that the Commission add trial offerings to the rule. The Commission has not done so. Given the Commission's broad discretion with respect to price regulation, however, an applicant is not foreclosed from seeking Commission approval for a trial offering under the rubric of price regulation.

6. **Rule 3.2.** This is a new rule which we added for clarity. Throughout the rulemakings in this docket we have attempted to provide notice to providers, potential new entrants, and other interested persons of various matters which we deem to be important. This rule falls within that notice concept. It informs interested persons that, in the absence of Commission action, all local exchange telecommunications services are regulated pursuant to a traditional rate-or-return regulatory scheme.

7. **Rule 3.3.** This rule was proposed Rule 4.8 in option 1, and post-hearing OCC et al. proposed Rule 4.1. It is included for clarity. It informs new entrants or potential new entrants that they may also seek relaxed regulatory treatment for local exchange telecommunications services which they offer.

8. **Rule 4.** This rule describes the required contents of an application for a specific form of price regulation, (proposed Rule 5, post-hearing OCC et al. proposed Rule 6). The parties agreed that the Commission must have sufficient information to make its determination with respect to an application. In addition, they generally agreed on the types of information needed by the Commission. Those areas of agreements are reflected in the

information which an applicant must provide in support of its application. See Rule 4.1.

a. We concur that this rule is necessary. At a minimum, this rule serves these important functions: (a) informs applicants that an application must contain information about the specific form of price regulation requested, the specific telecommunications service to which the specific form of price regulation will apply, and the specific geographic area(s) in which the service will be offered under the specific form of price regulation; (b) informs applicants of the data they must provide; (c) informs applicants that they cannot provide the specific service under a specific form of price regulation until the Commission has approved the application and certain other preconditions are met; and (d) informs applicants of the possible consequences of submitting an application which contains false information or misrepresentations.

9. **Rule 4.1.4.** This is a new rule which is designed to reduce regulatory burden. As part of an application, an applicant may, but need not, request Commission approval for the use of a specific type of public notice, other than those provided for in statute or rule, in conjunction with the specific form of price regulation sought. If the application is granted, the provider need not ask the Commission for permission to use the modified public notice so long as the alternative form of notice is used in conjunction with the approved specific form of price regulation. We find that this additional rule is in the public interest and

advances the transition to a competitive local exchange telecommunications market.

10. **Rules 4.1.12 and 4.1.13.** These rules are new. Under the proposed rules it was possible that a provider might be subject to conflicting requirements with respect to its accounting system or plan. These rules remove or lessen that possibility while assuring that the provider keeps, and the Commission can obtain, necessary information concerning the costs to provide a service and whether or not that service's price is recovering those costs.

a. It is important to have--and all parties recognized the importance of having--an accounting system or plan which segregates assets, liabilities, revenues, and expenses associated with a service under price regulation from other regulated services. Such a segregation is crucial to our responsibilities to minimize the possibilities of cross-subsidy; to assure that services are provided at just, reasonable, nondiscriminatory, adequate, fair, and affordable rates to all consumers in the state; and to advance universal service goals. Quite simply, we cannot perform these functions without cost segregation.

b. As proposed, the rules would have created a situation in which a provider might be subject to conflicting requirements concerning its accounting system or plan. Rules 4.1.12 and 4.1.13 address this potential conflict. Rule 4.1.12 requires a provider who does not already have a

Commission-approved accounting system or plan to state how the accounting method which the provider proposes to use meets the requirements of Rule 5 (pertaining to cost segregation). Rule 4.1.13 requires a provider who already has a Commission-approved accounting system or plan to state how that plan meets the requirements of Rule 5 (pertaining to cost segregation). In this way, the Commission is informed of the provider's current, approved accounting method (if any) and can assess whether or not that approved method is satisfactory under price regulation.

c. These rules provide a valuable cross-check to prevent, or reduce, the possibility of inconsistent regulatory requirements. We find that they are necessary.

11. **Rule 4.1.15.** The Commission added a new Rule 4.1.15. Pursuant to this rule and as part of its application, an applicant must provide a statement that, by filing the application, it agrees: first, to answer all questions propounded by the Commission or authorized members of its staff concerning the application, the subject matter of the application, or any information supplied in support of the application; and, second, to permit the Commission or authorized members of its staff to inspect the applicant's books and records as part of the investigation into the application, the subject matter of the application, or any information supplied in support of the application.

a. This area was not addressed in the proposed rule. The issue did, however, receive considerable attention

during the hearings held in another rulemaking. The participants at that hearing acknowledged that the Commission must be able to investigate applications and applicants, to obtain information from applicants, and to satisfy itself that it has the information the Commission considers necessary to make a decision on the application. The parties felt that the Commission should be able to obtain this information from any applicant, whether or not it is a "public utility" as defined in § 40-1-103, C.R.S.

b. The parties also expressed the preference for prompt Commission action on applications. To this end, they preferred rules which require an applicant to supply, in its application, data sufficient to permit the Commission and interested parties to understand the specific form of price regulation sought and to evaluate the application without the necessity of setting the application for hearing and engaging in discovery to obtain information. It was their expressed hope that full disclosure in the application would lessen the chances of an application's being opposed or contested. Assuming the required information is provided with an application and is complete, the Commission would be able to reach a decision on an uncontested application without setting the application for hearing. The parties stated that, again assuming an application was unopposed, prompt Commission action on an application would be beneficial to the applicant and to the public.

c. Aware that information submitted with the application might need to be clarified and that the Commission

might need to investigate an application to satisfy itself, the parties suggested that the Commission could use its authority pursuant to §§ 40-3-110 and 40-6-106, C.R.S., to obtain information from applicants. Some went so far as to state that submission of an application renders an applicant subject to our jurisdiction as a "public utility." We are not convinced that the cited statutory provisions allow us to obtain data from all applicants.

d. The Commission needs sufficient data (a) to assure itself of the appropriateness of a provider's offering a specific local exchange telecommunications service under a specific form of price regulation and (b) to support a Commission finding that, for example, under the circumstances, offering the specific local exchange telecommunications service under a specific form of price regulation is consistent with, and advances, public policy; is consistent with applicable statutes and Commission rules, decisions, and policy; will protect, or at least not harm, end-users; and will enhance the universal availability of basic local exchange service. (See, e.g., Rule 4.3.) We can obtain this information several ways: through our authority found in §§ 40-3-110 and 40-6-106, through discovery in administrative proceedings, and through the cooperation of the person from whom the information is requested.

e. A prerequisite found in the cited statutes is: the person from whom the Commission seeks information, or to whose books and records the Commission seeks access, must be a "public utility" (see definition of public utility in footnote 18, above).

In a combined application, applicants who are not certificated in Colorado, and therefore are not public utilities, may seek to offer local exchange telecommunications service under specific forms of price regulation. Sections 40-3-110 and 40-6-106 appear not to apply to those applicants.²¹

f. As a result, absent an agreement such as that found in Rule 4.1.15, it seems possible that the Commission could not obtain information from applicants who are not public utilities without setting the application for hearing and conducting discovery (see, e.g., Rule 77 of the Rules of Practice and Procedure, 4 CCR 723-1). Conducting discovery could prove to be cumbersome, costly to the Commission and all parties, and time-consuming. In addition, this approach would delay consideration of the application. Such a result runs counter to both our wishes and the expressed preferences of the rulemaking participants.

g. The most expeditious way for the Commission to obtain the information we need is that contained in Rule 4.1.15. In addition, it is not unreasonable for the Commission to require an applicant to cooperate with the Commission in its investigation of the application. Indeed, an applicant should welcome the opportunity to provide information to, and to clarify any points

²¹ As relevant to this decision, these sections would apply to a person who holds a certificate of public convenience and necessity, a certificate to provide local exchange telecommunications services, an operating authority, or any combination of these.

for, the Commission, the more so because the alternative is the possibility of lengthy delay.

h. We view Rule 4.1.15 as a reasonable approach which satisfies our needs and those of the applicants. For these reasons, among others, we adopt the rule.

12. **Rule 4.1.18.** This rule (proposed Rules 5.2.14 option one, 5.12(m) option two and post-hearing OCC et al. proposed Rule 6.13) contains a provision notifying an applicant that a certificate is conditioned upon the applicant's meeting certain prerequisites (e.g., filing necessary advice letters, transmittal letters, or adoption notices; complying with statute and Commission rules and orders). No party objected to this notice provision.

a. Upon consideration, the Commission has determined not to adopt the suggestion of some parties that the Commission demand only "substantial" compliance with the law. We find that the limitation is not warranted.

(1) First, absent a definition of "substantial" (which the parties did not supply), use of that modifier could produce confusion and uncertainty on the part of an applicant. Similarly, use of the word "substantial" complicates enforcement of this rule and could prove to be fertile ground for litigation if the Commission and an applicant do not share a common understanding of the word "substantial" as used in this context. The absence of the word "substantial" eliminates these potential difficulties.

(2) Second, and equally important, the absence of the word "substantial" from Rule 4.1.18 is beneficial. It puts an applicant clearly and unequivocally on notice that compliance with the statutes, rules, and orders in Colorado is obligatory for those who do business in this state. Obviously, this requirement does not limit the Commission's discretion to equitably evaluate each applicant's circumstances to reach a reasonable and balanced result.

(3) On balance, we determine that use of the word "substantial" is counter-productive. Accordingly, for the reasons stated among others, we issue Rule 4.1.18 without the word "substantial."

13. **Rule 4.1.19.** This rule (proposed Rule 5.2.16 option one, 5.1.2(h) option 2, and post-hearing OCC et al. proposed Rule 6.15) is a notice provision. The parties agreed that an applicant should be on notice that, upon Commission order, approval of the use of a specific form of price regulation may be null and void if the information contained in the application is found to be false or to contain misrepresentations. The parties also agreed that an applicant should be on notice that the Commission might take action, but, in accordance with due process requirements, can do so only after notice and opportunity to be heard.

a. We agree that Rule 4.1.19 is an important notice provision. We also agree that we can take action only in accordance with the law, which necessarily includes notice and opportunity for the provider to be heard. The provider should be

given the opportunity to be heard at least on the issues of (a) whether or not the information contained in the application is false or contains misrepresentations and, if so, (b) the action, if any, which the Commission should take as a result. Rule 4.1.19 is consistent with, and furthers, these principles.

b. The parties could not agree whether or not the misrepresentations should be "material." We determine that Rule 4.1.19 should not contain the word "material." We adopt the same reasons for rejecting "material" as those stated above with respect to use of the term "substantial." We find that the absence of the modifier "material" allows the Commission to retain its full authority to review the circumstances of each provider and to exercise its discretion and judgment on a case-by-case basis.

14. **Rule 4.2.** This rule (proposed 4.2 in option 2, and post-hearing OCC *et al.* proposed Rule 4.2) requires the applicant to give notice of its filing of the application for a specific form of price regulation to two groups: (a) existing customers and (b) all providers who offer the same service, a similar service, or a substitutable service in the geographic area(s) in which the applicant proposes to offer the service under the requested specific form of price regulation. The parties recognized that this notice provision is reasonable, and we agree.

This notice provision allows potentially affected customers to assess their options, and to take appropriate action, concerning the proposed specific form of price regulation under which the service would be offered if the Commission approved the

application. In addition, giving notice to all providers of the service (or of similar or substitutable services) within the geographic area(s) in which the applicant proposes to offer the service under a specific form of price regulation enables that the potentially affected incumbent provider and new entrants to assess their options and to take appropriate action.²²

15. **Rule 4.3.** This is a new rule which contains the criteria which the Commission may consider when determining whether or not to grant an application for a specific form of price regulation. We find that it is appropriate to provide guidance in this area so that new entrants, incumbents, consumers, and other interested persons know the types of factors which we will consider in considering an application.

a. This list is not exhaustive, however. The exact factors cannot be determined in advance because each case must be judged on its facts and circumstances. For the same reasons, we cannot--and do not--assign relative weight or importance to any category or factor. Particularly during this period of transition, we must be free to exercise our discretion to carry out our constitutional and statutory responsibilities.

b. We find that the criteria stated in Rule 4.3 provide a solid basis for, and good starting place for, our consideration of applications for specific forms of price

²² This provision is a further procedural protection for an incumbent providing service only in rural exchanges of 10,000 or fewer access lines. Upon receiving this notice, this incumbent provider may, if it elects to do so, file an application for a specific form of price regulation and move to have the applications consolidated for hearing.

regulation. We expect applicants to be prepared to address these areas, among others, if asked to do so.²³

16. **Rule 5.** This rule (proposed Rule 6 in option 1, proposed Rule 5.3.7 in option 2, and post-hearing OCC *et al.* proposed Rule 9) requires an accounting method or plan to segregate assets, liabilities, revenues, and expenses of a service subject to a specific form of price regulation from the assets, liabilities, revenues, and expenses of other regulated telecommunications services. The parties agreed that segregation is an important aspect of price regulation; and we agree.

As discussed above (see Rule 4.1.12 and 4.1.13 and discussion *supra* at paragraph II.C.10.b), these data are important for our implementing the transition to a fully competitive local exchange telecommunications market while assuring that the price for a service offered under a specific form of price regulation covers the cost to provide the service. We find that this rule is necessary to protect consumers and the competitive process.

17. **Rule 6.** This rule serves notice that the Commission may adopt procedures, in addition to and different from those contained in these rules, necessary to carry out the public policies contained in §§ 40-15-101, 40-15-501, 40-15-502, and 40-15-503(2)(c), C.R.S. This rule was proposed as Rule 7 in option 1 and also appears as Rule 10 in the post-hearing proposed

²³ We also expect administrative law judges who hear applications for specific forms of price regulation to consider these criteria, among others.

rules. It occasioned no adverse comment. We adopt the rule in order to provide full notice to interested persons.

18. **Rule 7.** This rule provides notice that, after notice and opportunity to be heard, the Commission may change an approved specific form of price regulation. It was proposed Rule 8 in option 1 and also appears as Rule 12 in the post-hearing proposed rules. It occasioned no adverse comment.

a. Like the definition of applicant (see Rule 2.2 and discussion *supra* at paragraph II.C.3), Rule 7 is limited. Only the Commission or the affected provider may seek to change an approved specific form of price regulation. In promulgating this rule, and for the reasons discussed above, we find that these rules should not provide third parties with a direct means of affecting an approved specific form of price regulation. This does not mean that affected consumers or customers are without recourse. At their option, they may avail themselves of the statutory complaint process (see § 40-6-108, C.R.S.) or may lodge an informal complaint with the Commission or the provider. In addition, when they receive notice of an application filed, they may elect to intervene in the proceeding or to submit a written statement to the Commission.

b. By limiting those who may seek to change an approved specific form of price regulation, we act to maintain some measure of control over this transition to a fully competitive local telecommunications services market. In light of the possibility that many applications will be filed, each of which

will require our strict attention, it is necessary to limit applications where possible. This is one such opportunity.

c. For these reasons, among others, we adopt Rule 7.

19. **Rule 8.** This rule (proposed Rule 9 in option 1, several provisions in option 2, and appearing as Rule 13 in the post-hearing OCC et al. proposed rules) informs applicants and other interested persons of the manner in which applications will be processed. By virtue of this rule, all persons are on notice that the procedures contained in the Rules of Practice and Procedure, particularly but not exclusively Rule 70, apply to all applications under these rules. We adopt this rule in order to provide full notice to interested persons.

20. **Rule 9.** This is a new rule; however, it is contained in the post-hearing proposed rules as Rule 13.7. The Commission has adopted a procedure, consistent across the sets of rules promulgated in this docket, which permits the filing of one application to obtain Commission approval for several related requests. The Commission anticipates that providing for one application will reduce the regulatory burden on applicants and will facilitate the transition to a fully competitive local exchange telecommunications market. Accordingly, we adopt Rule 9.

21. **Rule 10.** This rule (proposed Rule 10 option 1 and 2, and post-hearing OCC et al. proposed Rule 14) provides for waiver or variance from any provision of these rules. We find that providing an opportunity to seek a waiver or variance recognizes

that the rules may not fall equally upon all incumbents, new entrants, and potential new entrants. We find that this rule is a reasonable accommodation.

III. ADOPTION OF RULES

We are convinced that these rules regulating applications by local exchange telecommunications providers for specific forms of price regulation are essential to achieving the goals of HB 1335 in an orderly and timely fashion. The rules appended to this Decision as Attachment A are appropriate for adoption.

IV. ORDER

A. **The Commission Orders That:**

1. The rules set forth in Attachment A are adopted.
2. This Order adopting the attached rules shall become effective 20 days following the Mailed Date of this Decision in the absence of the filing of an application for rehearing, reargument, or reconsideration. In the event an application for rehearing, reargument, or reconsideration to this Decision is timely filed, and in the absence of further order of this Commission, this Order of adoption shall become final upon a Commission ruling denying any such application.
3. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register*

along with the opinion of the Colorado Attorney General regarding the legality of the rules.

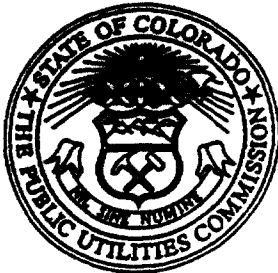
4. The adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion of the Colorado Attorney General.

5. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Order.

6. This Order is effective on its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 29, 1996.

(SEAL)



**THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

ROBERT J. HIX

CHRISTINE E. M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING APPLICATIONS
BY LOCAL EXCHANGE TELECOMMUNICATIONS PROVIDERS
FOR SPECIFIC FORMS OF PRICE REGULATION

4 CCR 723-38

BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to establish regulations regarding applications for specific forms of price regulation for local exchange telecommunications services. These rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law, and there are no duplicating or overlapping rules.

These rules are issued pursuant to §§ 40-2-108 and 40-15-503, C.R.S.

RULE 4 CCR 723-38-1. APPLICABILITY. These rules are applicable to all persons who are applying for a specific form of price regulation for a specific local exchange telecommunications service.

RULE 4 CCR 723-38-2. DEFINITIONS. The meaning of terms used in these rules shall be consistent with their general usage in

the telecommunications industry unless specifically defined by Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

723-38-2.1 Advice letter. Filing which is made with the Commission and which accompanies a tariff.

723-38-2.2 Applicant. Any provider of local exchange telecommunications services, or any person seeking to be authorized by the Commission to offer local exchange telecommunications services, who files an application with the Commission pursuant to these rules.

723-38-2.3 Application. A formal filing with the Commission, made by an applicant, which requests a specific form of price regulation.

723-38-2.4 Band of rates or banded prices. Range of rates or prices, which range is defined by a Commission-established price floor (the lower boundary) and a Commission-established price ceiling (the upper boundary) and within which a provider of local exchange telecommunications service may set a specific price.

723-38-2.5 Certificate of public convenience and necessity or CPCN. Commission-granted authority, subject to such terms and conditions as the Commission may establish, to provide the local exchange telecommunications services specifically identified and approved by the Commission; consists

of a certificate to provide local exchange telecommunications services and an operating authority within a specific operating area or areas.

723-38-2.6 Certificate to provide local exchange telecommunications services or certificate. Commission-granted authority to offer local exchange telecommunications services in the state of Colorado; the first of two prerequisites to obtaining a certificate of public convenience and necessity.

723-38-2.7 Commission. The Public Utilities Commission of the state of Colorado.

723-38-2.8 Detariffed or detariffing. A local exchange telecommunications service which the Commission has determined may appropriately be offered without filing a tariff setting forth the terms and conditions pursuant to which the service is generally offered; or, the process for obtaining commission approval of such a service offering; not synonymous with deregulation.

723-38-2.9 Form tariff, form price list, price list, or tariff. A document which contains all of the terms and conditions for all local exchange telecommunications services to be offered by a provider of local exchange telecommunications services.

723-38-2.10 Local exchange telecommunications services or service. Basic local exchange service and such other services identified in § 40-15-201, C.R.S., or defined by the Commission pursuant to § 40-15-502(2), C.R.S.; regulated advanced features, premium services, and switched access as defined in § 40-15-301(2)(a), (b), and (e), C.R.S.; or any of the above, singly or in combination.

723-38-2.11 Operating area. Specific geographic area in which a provider of local exchange telecommunications services is authorized by the Commission to exercise the rights and privileges granted pursuant to a certificate of public convenience and necessity.

723-38-2.12 Operating authority. Commission-granted authority to offer local exchange telecommunications services within an operating area; the second and last prerequisite to obtaining a certificate of public convenience and necessity.

723-38-2.13 Price regulation. Commission-approved form of regulation of a provider's offering of any local exchange telecommunications service, which form of regulation may contain, without limitation: regulation of the price and quality of services; price floors and price ceilings; flexibility in pricing between price floors and price ceilings; modified tariff requirements; incentives for increased efficiency, productivity, and quality of service; or any combination of these.

723-38-2.14 Provider of local exchange telecommunications services or provider. Any person who holds a certificate of public convenience and necessity to provide local exchange telecommunications services.

723-38-2.15 Transmittal letter. Filing which is made with the Commission and which accompanies a notice of change to a price list.

RULE 4 CCR 723-38-3. SPECIFIC FORMS OF PRICE REGULATION.

On its own motion (by adjudication or by rulemaking) or in response to an application, the Commission may grant, for any

local exchange telecommunications service and on a geographic basis, a specific form of price regulation.

723-38-3.1 Specific forms of price regulation. The Commission may grant, singly or in combination, without limitation, any of the following:

723-38-3.1.1 Tariffed forms of price regulation.

723-38-3.1.1.1 Banded prices. The Commission may set a band of rates within which an applicant will be allowed to price. When the Commission approves the use of a price band, the following procedures shall apply unless the Commission issues an order modifying them:

723-38-3.1.1.1.1 Price ceilings and price floors defining price band. Within 30 days of the date of a final Commission decision approving an application to offer a service within a band of rates, a provider shall file an advice letter setting a ceiling price and a floor price which defines the band of rates. Both the price floor and the price ceiling shall be determined in accordance with, and shall be subject to, the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, and the Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, unless the applicability of those rules is waived by the Commission.

723-38-3.1.1.1.2 Initial price list. The provider shall file, as part of the advice letter defining the price band, an initial price list that describes the terms and conditions of service and the rates to be charged for the service. If prices vary between, among, or within different

customer classes, territories, or levels of service, the price list must reflect each such variance.

723-38-3.1.1.1.3 Changes to boundaries of band of rates. A provider wishing to change the price ceiling or the price floor, or both, of a band of rates shall file an advice letter. Both the amended price floor and the amended price ceiling shall be determined in accordance with, and shall be subject to, the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, and the Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, unless the applicability of those rules is waived by the Commission.

723-38-3.1.1.1.4 Changes to prices within established band of rates. On or before 14 days prior to the desired effective date for a change to one or more prices contained in an established price band, a provider shall file with the Commission, by transmittal letter, a price list that describes each change proposed to the prices to be charged for the service. If prices vary between, among, or within different customer classes, territories, or levels of services, the price list must reflect each such variance. The Commission may set for hearing and, after hearing, may approve, modify, or deny any aspect of a change proposed to a price within a band of rates. If the Commission sets a proposed change in a price for hearing, the proposed change shall not go into effect on the proposed effective date without further order of the Commission. At the hearing, the provider shall bear the burden of proof with respect to each proposed change in the price(s) within a band of

rates. If the Commission does not set the proposed change to the price(s) for hearing within 14 days of the filing of the transmittal letter, the new price shall go into effect by its terms.

723-38-3.1.1.2 Modified tariff requirements. The Commission may, in its sole discretion, permit the use of modified tariff requirements (for example, shortened notice period) for the offering of a specific service.

723-38-3.1.2 Detariffed forms of price regulation. There are two steps to detariffing: first, the Commission must grant an application for a specific detariffed form of price regulation; second, the provider must submit specific information about the manner in which the provider intends to implement the specific detariffed form of price regulation. For the following types of detariffed forms of price regulation, except as otherwise provided by Commission decision and order, the following procedures apply for submission of the specific information about implementation:

723-38-3.1.2.1 Confidential price floor. The Commission may permit the use of a confidential price floor for a specific service. If permitted, the price floor shall be filed with the Commission under seal on or before 14 days before the proposed effective date for implementation of the price floor. The price floor is subject to Commission review to determine that the price floor (a) is consistent with the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30; (b) is not inappropriate; and (c) is not inconsistent with the public interest. The Commission may set the proposed

confidential price floor for hearing pursuant to such modified procedures as the Commission may deem appropriate and as are consistent with the Commission's practice and procedure designed to deal with confidential filings. At the conclusion of such modified procedure or hearing, the Commission may approve, modify, or reject the proposed confidential price floor. If the Commission sets a price floor for hearing, the proposed price floor shall not go into effect on the proposed effective date without further order of the Commission. At the hearing, the applicant shall bear the burden of proof with respect to the price floor. If the Commission does not set the price floor for hearing within 14 days of the filing of the price floor, the price floor shall go into effect by its terms.

723-38-3.1.2.2 Confidential contract. The Commission may permit a provider to contract with a customer, subject to Commission approval, for the provision of a local exchange telecommunications service irrespective of tariff or price list requirements. If permitted, a notice of contract shall be filed with the Commission under seal prior to the expiration of 14 days from the date the contract is executed. The contract shall be subject to Commission review to determine whether (a) the rate negotiated is nondiscriminatory and the customer who is a party to the contract did not receive an inappropriate rate; (b) the contract terms are consistent with the public interest; and (c) the contract terms are consistent with applicable Commission rules. The Commission may set the contract for hearing and, after hearing, may approve or disapprove the contract. At the hearing, the applicant shall bear the burden of proof with respect to the contract. If the

Commission does not set the contract for hearing, the contract is effective according to its terms.

723-38-3.1.3 Incentives for increased efficiency, productivity, and quality of service. The Commission may devise a specific form of price regulation which, in the Commission's judgment, and without limitation, enhances efficiency, productivity, or service quality, or any combination of these.

723-38-3.1.4 Other specific forms of price regulation. The Commission may devise any specific form of price regulation which is, in the Commission's judgment, in the public interest and appropriate for the applicant's circumstances.

723-38-3.2 Default regulatory scheme.

723-38-3.2.1 Part 2 service. In the absence of a Commission-approved specific form of price regulation, a part 2 of Title 40, Article 15, C.R.S., local exchange telecommunications service shall be regulated pursuant to a traditional rate-of-return regulation methodology.

723-38-3.2.2 Part 3 service. In the absence of a Commission-approved specific form of price regulation or of a Commission-approved form of relaxed regulatory treatment (see Rules Regulating Emerging Competitive Telecommunications Service, 4 CCR 723-24), a Part 3 of Title 40, Article 15, C.R.S., local exchange telecommunications service shall be regulated pursuant to a traditional rate-of-return regulation methodology.

723-38-3.3 Price regulation and relaxed regulation.
With respect to a service which is a Part 3 of Title 40,